IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.863 OF 1999

1. Kamlesh Chandrakishor Saraf
Age 19 Years, Occupation: Business.

2. Smt. Madhukanta Baldeo Saraf
Age 45 years, Occupation : Business
and Housewife.

3. Sou Anjali Sudhir Saraf,
Age 30 years, Occupation:
Housewife.

4. Sou Reva Natwarlal Saraf
Age: 65 years, Occupation :
Household.

All residing at 780, Budhwar
Peth, Pune 411 002. ...Petitioners.

V/s

1. Shri P.R. Panchal,
Inspector, Shops & Establishment
Department C/o. Labour Department,
Additional Labour Commissioner
Bungalow No.5, Pune-Mumbai
Road, Wakadewadi Pune 411 005.

2. State of Maharashtra. ...Respondents.

None for the petitioners.

Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 19th January, 2006

ORAL JUDGMENT:

1. None appears for the petitioners.

2. Heard the learned APP appearing on behalf of the State.

3. The petitioners are challenging the order passed by the Judicial Magistrate, First Class, Pune rejecting the application which is filed by the applicants for quashing the complaint which was filed against them. The learned Magistrate was pleased to dismiss the said application. Against the said order, the petitioners filed Revision Application in the Sessions Court which was also dismissed.

4. The grievance of the petitioners is that both the lower Courts have not taken into consideration the provisions of section 58 of the Bombay Shops and Establishment Act, 1948. The petitioners are prosecuted under the provisions of section 18(2) and section 62 of the Shops and Establishment Act, 1948 for non-compliance of the said provisions. Section 18 lays down that the employer should atleast give one holiday to his employee and section 62 lays down that the employer should maintain the registers and records and display the notices on the premises of his establishment on the special orders of the State Government. The said orders are challenged on the ground that both the lowers courts have not taken into

consideration the provisions of section 58 of the Shops and Establishment Act which, inter alia, lays down that if the owner of the establishment is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and not all the partners. The provisions of section 58 are self explanatory. Both the lower courts have not taken into consideration the exception which is carved out in the said provision. The petitioners 2 to 4 are the sleeping partners and only the first Petitioner is the active partner of the firm. In the result, the grievance of the petitioners will have to be accepted and the process which is issued against the petitioners 2 to 4 is hereby quashed and set aside. The Trial Court, however, may proceed against the petitioner No.1 and decide the case as expeditiously as possible after giving notice to Petitioner No.1.

5. Petition is partly allowed in the above terms.

V.M. KANADE, J.